

BEFORE THE POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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Permanent Addition of USPS Connect  
Local Mail Price Category to the Market  
Dominant Product List

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Docket No. MC2023-12

COMMENTS OF PITNEY BOWES INC.  
(December 9, 2022)

Pursuant to Order No. 6326, Pitney Bowes Inc. (Pitney Bowes) respectfully submits these comments in opposition to the United States Postal Service's (Postal Service) November 9, 2022 revised request to convert USPS Connect Local Mail into a permanent offering.<sup>1</sup>

Pitney Bowes supports the concept of the USPS Connect Local Mail product offering as an innovative approach to make use of the Postal Service's network capabilities to enhance same day and next day local document delivery services. However, Pitney Bowes opposes the Postal Service's request to convert the Connect Local Mail market test to a permanent product offering *at this time* because, as proposed, the offering would unlawfully provide an unfair competitive advantage to the Postal Service by limiting access to only to those who use the Postal Service's own postage evidencing service, Click-N-Ship or the USPS API.<sup>2</sup> The Postal Service's proposed regulations establishing Connect Local Mail as a permanent product would impermissibly preclude Pitney Bowes and other companies from offering complementary postage evidencing services for this First-Class Mail product. The proposal would, if adopted, constitute a violation of 39 U.S.C. § 404a(a)(1).

Fortunately, the current market test is not scheduled to expire until January 2024. The time remaining in the market test period affords the Postal Service the time to work with other postage

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<sup>1</sup> See United States Postal Service Revised Request to Convert USPS Connect Local Mail to a Permanent Offering (Nov. 9, 2022) (Request).

<sup>2</sup> The Postal Service describes its application programming interface (API) as an application it developed to allow users to print multiple USPS Connect Local Mail labels rather than using Click-N-Ship to print one label at a time. See Response of the United States Postal Service to Chairman's Information Request No. 1, Question 5 (Dec. 5, 2022).

evidencing providers to address any technical issues necessary to make USPS Connect Local Mail available more broadly. Expanding access to the product will benefit small and medium-sized business users of the new product and should increase its adoption and long-term success. Accordingly, the Commission should deny without prejudice the Postal Service's request to convert the Connect Local Mail market test to a permanent product offering at this time. The Commission should likewise disapprove any subsequent request unless and until the Postal Service cures the section 404a violation by allowing access to complementary postage evidencing channels.

## **I. BACKGROUND**

The Postal Accountability and Enhancement Act (PAEA) reconstituted the Postal Regulatory Commission and enhanced its regulatory and oversight authority.<sup>3</sup> The Commission's enhanced regulatory authority is consistent with the PAEA's stated goals of increased transparency and accountability. Among other responsibilities, the PAEA requires the Commission to exercise its regulatory authority to ensure a level playing field when the Postal Service competes with the private sector.

Section 404a was enacted as part of the PAEA and states:

Except as specifically authorized by law, the Postal Service may not . . . establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service[.]<sup>4</sup>

The PAEA was not accompanied by any conference or committee reports; however, the legislative history of several precursor bills that contained language identical to that ultimately enacted as section 404a confirm Congress' unambiguous intent.<sup>5</sup> For example, the Senate Report on S. 2468, a precursor bill from

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<sup>3</sup> See Pub. L. No. 109-435, 120 Stat. 3198 (Dec. 20, 2006). The PAEA amends various sections of title 39 of the United States Code. Unless otherwise noted, section references in these comments are to sections of title 39.

<sup>4</sup> 39 U.S.C. § 404a(a)(1).

<sup>5</sup> Section 404a first appeared in the 106th Congress in H.R. 22. *See* Postal Modernization Act of 1999, H.R. 22, 106th Cong. (1<sup>st</sup> Sess. 1999). The H.R. 22 version has no provision for the Postal Service to demonstrate that a rule that established the terms of competition did not create an unfair advantage. *See* H.R. 22, 106th Cong. § 305 (1999). Subsequent iterations of this provision expressly assign the burden to the Postal Service to demonstrate that any rule establishing the terms of competition does not create an unfair advantage for the Postal Service or any entity funded by the Postal Service. *See* H.R. 4970, 107th Cong. (2d Sess. 2002); S. 1285, 108th Cong. (1st Sess. 2003); S. 2468, 108th Cong. (2d Sess. 2004); H.R. 4341, 108th Cong. (2d Sess. 2004); H.R. 22, 109th Cong. (1st Sess. 2005); S. 662, 109th Cong. (1st Sess. 2005); H.R. 6407, 109th Cong. (2d Sess. 2006).

the 108<sup>th</sup> Congress, makes clear that the provision that became section 404a was intended to prohibit the Postal Service “from using its rulemaking authority to put itself at a competitive advantage or put another party at a competitive disadvantage.”<sup>6</sup> The House Report on H.R. 22 in the 109<sup>th</sup> Congress uses similar language.<sup>7</sup> These reports demonstrate Congress’ concern that without the protections adopted in section 404a, the Postal Service might misuse its governmental status, its legal monopoly, and its regulatory authority to create an unfair competitive advantage for itself relative to private firms offering complementary services. Concerns regarding competitive foreclosure are particularly acute in markets where the Postal Service acts simultaneously as a regulator and a competitor.

As the Commission is well aware, the market for postage evidencing services is a highly competitive market. The postage evidencing services offered by companies like Pitney Bowes are complements of mail products offered by the Postal Service. Postage evidencing solutions offered by these companies make mail more valuable and access to postal services more secure and cost efficient, benefiting the Postal Service, small and medium-sized businesses, and their end customers. Companies like Pitney Bowes compete not only with other private companies offering postage evidencing solutions, but also with the Postal Service’s own competitive offerings, specifically, the Postal Service’s Click-N-Ship solution or the USPS API.<sup>8</sup> The Postal Service not only competes in the market for postage evidencing services, it also exercises direct regulatory authority over that market.<sup>9</sup>

The Request signals a departure from the Postal Service’s normal practice of offering its own solution as a supplement to other competitive postage evidencing options. For example, the existing Domestic Mail Manual (DMM) postage payment provisions for retail First-Class Mail provide that “postage for single-piece First-Class Mail and First-Class Package Service—Retail must be paid with affixed postage

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<sup>6</sup> See Postal Accountability and Enhancement Act, S. 2468, 108<sup>th</sup> Congress (2004)(as reported by S. Comm. on Gov’t Affairs, Aug. 25, 2004)(Senate Report 108-318 at 28).

<sup>7</sup> See House Report 109-66, Part I at 43 (Apr. 28, 2005); see also Postal Accountability and Enhancement Act, H.R. 22, 109<sup>th</sup> Congress (2005)(as reported by H. Comm. on Gov’t Reform, Apr. 28, 2005).

<sup>8</sup> See e.g., <https://www.usps.com/business/loyalty.htm>.

<sup>9</sup> See 39 CFR §§ 501 *et seq.*

stamps [], postage evidencing system postage [], or precanceled stamps.”<sup>10</sup> The Postal Service’s Click-N-Ship postage evidencing solution is an optional, additional payment channel available for First-Class Package Service—Retail Business Customers.<sup>11</sup> The existing DMM postage payment provisions for commercial First-Class Mail similarly states: “[b]asic Standards for Postage Payment First-Class Mail presorted and automation postage must be paid with precanceled stamps, metered postage, or permit imprints.”<sup>12</sup>

The Postal Service’s Request to limit postage evidencing to only Click-N-Ship or the USPS API for USPS Connect Local Mail overturns over 100 years of the successful recognition and use of postage evidencing options like those offered by Pitney Bowes as a qualifying postage payment method for First-Class Mail. Without any explanation, the Request asserts that the permanent product offering would only “offer USPS Connect Local Mail to individual and business customers through Click-N-Ship as well as the USPS API.” Request at 2. Whereas the current First-Class Mail postage payment method is open to all approved postage evidencing methods, offering postal users competitive options, the Request would make the Postal Service’s Click-N-Ship or the USPS API the *exclusive* payment channel for an entire category of First-Class Mail, precluding all other competitive postage evidencing solutions. There is no legitimate justification for the unfair competitive advantage that this change would confer on the Postal Service, and such an arrangement constitutes a direct violation of section 404a(a)(1). The Commission must address this issue as part of the pending request to convert USPS Connect Local Mail to a permanent product.

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<sup>10</sup> DMM Sec. 134.1.1.1, Postage Payment Methods for First-Class Mail and First-Class Package Service — Retail, Payment Method, General, 134 Postage Payment Methods | Postal Explorer (usps.com).

<sup>11</sup> See DMM Sec. 134.1.1.2. (“In addition to payment methods in 1.1.1, eligible First-Class Package Service — Retail business customers registered on USPS.com may pay postage with USPS Click-N-Ship.”).

<sup>12</sup> DMM Sec. 234.1.0, Basic Standards for Postage Payment, <https://pe.usps.com/cpim/ftp/manuals/dmm300/234.pdf>.

## II. DISCUSSION

### **A. The Request should be denied as premature; there is more than a year remaining in the market test and the Postal Service has not addressed why the Request would not create an unfair competitive advantage for itself**

The concerns regarding unfair competitive advantage are not new. The Package Shippers Association (PSA) raised the issue more than a year ago in response to the Postal Service’s initial request to initiate the market test for USPS Connect Local Mail. On December 6, 2021, PSA moved the Commission to issue information requests to the Postal Service requesting a justification under section 404a for limiting postage evidencing channels to USPS solutions—Click-N-Ship and USPS APIs—and asking for assurance that rules precluding competition would be addressed in the event the Postal Service requested to convert USPS Connect Local Mail to a permanent product.<sup>13</sup> The next day, the Commission issued information requests addressing related issues.<sup>14</sup>

In response to the Commission information requests, the Postal Service stated the limitations on qualifying postage evidencing options were driven by practical considerations unique to the initiation of the market test.<sup>15</sup> Specifically, the Postal Service indicated that “at least initially,” the market test would limit postage payment options to Click-N-Ship to “limit[] variables” and “limit[] systems changes and associated costs during the testing phase.”<sup>16</sup> The Postal Service likewise suggested that its decision to “streamline” postage evidencing options for purposes of the market test was necessary because “other postage evidencing options will need access to a system that verifies that each address selected is eligible to accept USPS Connect Local Mail[]” and that at the time the market test was initiated the “technology” or “software modifications” necessary did “not exist.”<sup>17</sup> The implied suggestion was that while it might

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<sup>13</sup> See Docket No. MT2022-1, Motion of Package Shippers Association for Issuance of Information Request, at 1 (Dec. 6, 2021)(“The proposed questions seek information that will allow participants and the Commission to better evaluate whether the proposed experimental product meets the applicable legal requirements, including 39 U.S.C. §§ 404a and 3641.” (emphasis added)).

<sup>14</sup> See Docket No. MT2022-1, Chairman’s Information Request No. 3 (Dec. 7, 2021)(CHIR No. 3).

<sup>15</sup> See Docket No. MT2022-1, Response of the United States Postal Service to Chairman’s Information Request No. 3 (Dec. 14, 2021)(Postal Service Response to CHIR No. 3).

<sup>16</sup> Postal Service Response to CHIR No. 3, Questions 1, 3, and 4(a).

<sup>17</sup> Postal Service Response to CHIR No. 3, Questions 2 and 3.

not have made sense to design system interfaces in advance of the proof of concept, if the market test proved successful, then the Postal Service would work with USPS-approved postage evidencing providers to address the technical specifications necessary for full, nondiscriminatory participation. This conclusion was not only implied in the Postal Service’s responses to CHIR No. 3, but logically compelled by the stated rationale for limiting other postage evidencing solutions in the first place. It was, therefore, not surprising that the Postal Service further intimated that it would explore expanded payment channels during the market test in advance of its request to convert Connect Local Mail to a permanent product, stating “if the market test is successful, the Postal Service would consider broadening payment options[.]”<sup>18</sup>

The Commission Order approving the market test likewise contemplated the Postal Service would address this issue as part of the two-year market test in advance of any request to make USPS Connect Local Mail a permanent product.<sup>19</sup> The Postal Service has not done so. Despite PSA and the Commission raising these issues previously, and despite the Postal Service’s assurances that the limitation on postage evidencing options were necessitated by pragmatic considerations unique to a market test, the Postal Service’s Request does not address the issue of the Postal Service granting itself an unfair competitive advantage. The Request merely asserts that like the market test, the permanent product offering would only “offer USPS Connect Local Mail to individual and business customers through Click-N-Ship as well as the USPS API.” Request at 2.

The Commission Order approving the USPS Connect Local Mail market test was explicit that considerations relevant to market tests of experimental products are different than those relevant to the evaluation of a permanent product, given the purposes of section 3641 and the “safeguards inherent” in the market test context, including the limits on duration and revenue, reporting requirements, and the “reevaluation of the product should the Postal Service wish to extend the test or offer the product permanently.”<sup>20</sup> The Commission further emphasized that it “reserves judgment on whether a future

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<sup>18</sup> Postal Service Response to CHIR No. 3, Question 4(c).

<sup>19</sup> See Docket No. MT2022-1, Order Authorizing Market Test of Experimental Product – USPS Connect Local Mail (Jan. 4, 2022) at 3, n.3 (Order No. 6080).

<sup>20</sup> Order No. 6080, at 15

application from the Postal Service to make USPS Connect Local Mail product permanent would satisfy the applicable requirements” of title 39.<sup>21</sup> The Request does not satisfy the applicable requirements of title 39 or do what the Postal Service said it would do and the Commission expected it to do in addressing the issue of unfair competitive advantage.

**B. A First-Class Mail product that precludes all other postage evidencing options in favor of the Postal Service’s own competitive solution violates Section 404a(a)(1)**

Section 404a(a)(1) states that “[e]xcept as specifically authorized by law,” the Postal Service “may not establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any other entity funded (in whole or in part) by the Postal Service[.]”<sup>22</sup> A USPS Connect Local Mail permanent First-Class Mail product that precludes all other postage evidencing options in favor of the Postal Service’s own competitive offering, Click-N-Ship, violates section 404a(a)(1).

As to the first element, the Postal Service is proposing to establish a “rule or regulation.” The Postal Service published a final rule on USPS Connect Local Mail amending the Mailing Standards of the United States Postal Service, Domestic Mail Manual, including the basic standards for postage payment under DMM Section 234, in the Federal Register on October 20, 2022.<sup>23</sup> The Mailing Standards of the United States Postal Service, Domestic Mail Manual, are incorporated by reference into the Code of Federal Regulations.<sup>24</sup> Accordingly, there is no dispute the Postal Service is proposing to establish a rule or regulation within the meaning of section 404a(a)(1).<sup>25</sup>

As to the second element, the regulation establishing USPS Connect Local Mail would have the “effect” of “preclud[ing] competition or otherwise establish[ing] the terms of competition.” The regulation

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<sup>21</sup> Order No. 6080, at 13.

<sup>22</sup> 39 U.S.C. § 404a(a)(1).

<sup>23</sup> See 87 Fed. Reg. 63696 (Oct. 20, 2022).

<sup>24</sup> See 39 C.F.R. §§ 111.1, 111.3.

<sup>25</sup> The Commission’s regulations interpreting the meaning of the term “rule, regulation or standard” in the context of section 404a define the terms broadly to include “among other things, documents or policies issued by the Postal Service to exercise its regulatory authority or otherwise act as a governmental entity.” 39 C.F.R. § 3024.5(c).

implementing USPS Connect Local Mail as a permanent First-Class Mail product expressly forecloses complementary postage evidencing options offered by Pitney Bowes and other USPS-approved postage evidencing providers. The regulation states plainly, “USPS Connect Local Mail mailings must be paid with USPS Click-N-Ship or USPS API.”<sup>26</sup> Because the regulation unambiguously precludes competition from other postage evidencing solutions it is a textbook example of the type of competitive foreclosure prohibited by section 404a(a)(1).

The two elements above establish a violation of section 404a(a)(1): the Postal Service has established a regulation, and the effect of the regulation is to preclude competition in favor of its own competitive offering. Section 404a “makes clear that the Postal Service is barred from using its rulemaking authority to put itself at a competitive advantage or put another party at a competitive disadvantage.”<sup>27</sup> The plain language of Section 404a reflects Congress’ firm conclusion that harm to competition is an inevitable result when a government monopoly exercises its regulatory authority to preclude competition or set the terms of competition to advantage itself in a competitive market.

The only remaining question is whether the Postal Service can assert a statutorily authorized affirmative defense to overcome this violation of section 404a(a)(1). To do so the Postal Service must demonstrate either that (1) it is “specifically authorized by law”<sup>28</sup> to take the action in question, or (2) the regulation at issue “does not create an unfair competitive advantage for itself or any other entity funded, in whole or in part, by the Postal Service.”<sup>29</sup> Neither defense is available here.

The Postal Service has not and cannot cite any specific authorization for the regulation in question. The Request and the accompanying Resolution of the Governors cite only to the Postal Service’s general authority “pursuant to section 3642” to introduce a new product.<sup>30</sup> Nothing in section 3642 authorizes the Postal Service to take any action that would otherwise violate section 404a. Nor can the Postal Service cite

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<sup>26</sup> 87 Fed. Reg., at 63698.

<sup>27</sup> S. Rep. No. 318, 108<sup>th</sup> Cong., 2d Sess. at 28 (Aug. 25, 2004).

<sup>28</sup> 39 U.S.C. § 404a(a)(1); 39 C.F.R. § 3024.8(a).

<sup>29</sup> 39 U.S.C. § 404a(a)(1); 39 C.F.R. § 3024.5(b).

<sup>30</sup> Resolution of the Governors of the United States Postal Service, Conversion of USPS Connect Local Mail Market Test into a Permanent Offering Listed on the Mail Classification Schedule (Resolution No. 22-6) at 1 (Oct. 4, 2022)



to the general or specific authorities under sections 401 or 404 as the basis of an affirmative defense. The Commission's regulations make clear that the Postal Service's general and specific authorities in sections 401 and 404 are subject to the limitations imposed by section 404a and, thus, cannot serve as the basis of an affirmative defense to a violation of section 404a.

The Postal Service also cannot demonstrate that the regulation at issue "does not create an unfair competitive advantage for itself or any other entity funded, in whole or in part, by the Postal Service." By design, the regulation favors the Postal Service's own postage evidencing solution, Click-N-Ship or USPS API, by requiring all users of the USPS Connect Local Mail First-Class Mail product to use only that solution. The Postal Service has previously confirmed that under its proposed regulation competitive offerings by Pitney Bowes and other individual firms "do not qualify" as a "USPS API" and would be precluded.<sup>31</sup> Again, a regulation that explicitly forecloses the use of other competitive offerings in favor of the Postal Service's own competitive service is a paradigmatic section 404a violation. The Commission should exercise heightened sensitivity where, as here, the Postal Service is regulating and competing in the same market; in this case, the Postal Service's postage evidencing solutions directly compete with complementary postage evidencing services offered by private parties that the Postal Service actively regulates.

The Postal Service's stated rationale for limiting payment channels in the context of the market test cannot justify the exclusion of competitive complementary postage evidencing services for a permanent First-Class Mail product. First, the Commission has made clear that the evaluation of an experimental market test is different than the evaluation of a permanent product given the inherent "safeguards" in the market test context. Second, the stated reasons for limiting options in the market test do not apply in the context of a permanent product request. The Postal Service states the market test has proven USPS Connect Local Mail can be successful as a permanent product; accordingly, there is no longer any valid reason to "limit variables" or to prioritize "learning" over "reach" and nondiscriminatory access.<sup>32</sup> The technological

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<sup>31</sup> Postal Service Response to CHIR No. 3, Question 1

<sup>32</sup> Postal Service Response to CHIR No. 3, Questions 3, 4, 5.

limitations—system interface requirements to verify address eligibility and successful completion of the registration process—are analogous to existing, routine exchanges between postage evidencing providers and the Postal Service. Finally, even if reasons stated in the market test context for precluding all other competitive postage evidencing options were persuasive (they are not), they would not be legally sufficient to overcome a violation of section 404a.

**C. The section 404a analysis is distinct from the Commission’s product level analysis under section 3641**

In Order No. 6080, the Commission found no “indication that testing USPS Connect Local Mail will “create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any other mailer, particularly in regard to small business concerns.”<sup>33</sup> This finding has no bearing on whether the Postal Service’s regulations establishing USPS Connect Local Mail violate section 404a by excluding competitive postage evidencing solutions. The two statutory provisions are distinct and independent. The section 3641(b)(2) market disruption analysis is examining a different product in a different market. The relevant market for purposes of the Commission’s section 3641 analysis was defined as “expedited letter mail service, with local induction and local delivery.” The competitor analysis thus appropriately focused on other firms offering expedited final mile document delivery services. This “downstream” end-product analysis is different from the analysis of the “upstream” competitive market for complementary postage evidencing services. The Postal Service has conceded this point.<sup>34</sup>

The Postal Service previously asserted in response to a Commission information request that “title 39 does not constrain the Postal Service’s discretion to vary payment options by product based on business needs.”<sup>35</sup> No party is disputing the Postal Service’s general authority to establish rules governing payment options for different products, *provided* the exercise of that discretion does not give the Postal Service an

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<sup>33</sup> Order No. 6080, at 12 (citing and quoting 39 U.S.C. § 3641(b)(2)).

<sup>34</sup> See Postal Service Response to CHIR No. 3, Question 6 (“With respect to market tests in particular, subsection (b)(2) of section 3641 looks to whether the proposed experimental product itself creates market disruption, rather than the specific mail acceptance and payment processing details around the product.”).

<sup>35</sup> Postal Service Response to CHIR No. 3, Question 6. Again, this answer was in response to whether limiting payment options created an unfair or otherwise inappropriate competitive advantage for the Postal Service in the context of the “conditions” imposed by 39 U.S.C. § 3641(b)(2), not in the context of section 404a.

unfair competitive advantage. Again, the Commission has appropriately held that the Postal Service’s general and specific statutory authorities, including the specific authority under section 404(a)(2) to “prescribe the manner in which [postage] is to be paid” is subject to the statutory limitations of section 404a.<sup>36</sup> There is no dispute that the language and purpose of Section 404a prohibits the Postal Service from adopting rules that preclude competition or set the terms of competition in a manner that creates an unfair competitive advantage for itself; this includes rules precluding competition for payment options.

**D. The Commission should address the unfair competitive advantage issues before approving USPS Connect Local Mail as a permanent product**

The Commission has adopted special rules for complaints alleging violations of section 404a.<sup>37</sup> The existence of these rules does not, however, in any way limit the Commission’s inherent authority to take such action as it considers appropriate, including dismissing the Postal Service’s request without prejudice to allow sufficient time for the Postal Service to cure the section 404a violation.<sup>38</sup> A requirement that the same issues be reintroduced in a subsequent docket would elevate form over substance, frustrate administrative economy and prompt resolution of the issue. The separate complaint rules underscore the importance of section 404a, they should not be interpreted to require additional, unnecessary procedures to address this important issue in other contexts where it is raised. This is particularly true where, as here, the Commission, by statute, can raise the very same issues on its own initiative if it has reason to believe the Postal Service would not be operating in conformance with the statutory requirements of section 404a.

To state a prima facie case under section 404a any interested party need only show that the Postal Service established a regulation that would “preclude competition” or “establish the terms of competition.” The requisite showing has already been made by numerous commenters in this docket; accordingly, that is

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<sup>36</sup> See Docket No. RM2013-4, Order Establishing Final Rules Pursuant to 39 U.S.C. 404a (Oct. 6, 2014) at 13 (Order No. 2207)(“Authority for all Postal Service action is derived from its general and specific authority that is set forth in 39 U.S.C. 401 and 404 . . . Action by the Postal Service pursuant to either of those sections is limited by and subject to 39 U.S.C. 404a[.]”).

<sup>37</sup> See 39 C.F.R. §§ 3024 *et seq.*

<sup>38</sup> See *Biden v. Texas*, 142 S. Ct. 2528, 2543 (2022)(noting that an agency has discretion to act within its relevant statutory framework so long as the action is “reasonable and reasonably explained”); *McAfee v. U.S. Food and Drug Admin.*, 541 F.Supp.3d 21, 29 (D.D.C. 2021) (“In the same way that an agency can choose between rulemaking or adjudication to pursue its policy aims, it is free to choose which of its applicable statutory authorities should form the basis of an administrative action.”).

enough for the Commission to take up the issue now. Delay and formalism could only serve to cause actual harm in the market by allowing the Postal Service to establish a permanent First-Class Mail product that precludes competition from private postage evidencing providers to advantage the Postal Service's own solution.

Any argument that the permanent product could be approved based on the Postal Service's future promise to cure the section 404a violation must be rejected. This docket has been marred by incomplete and inadequate filings on this issue and others.<sup>39</sup> Acquiescing to a request to move forward based on indefinite commitments to make changes at some unspecified future date would only invite similar issues in the future. Additionally, allowing the Postal Service to introduce USPS Connect Local Mail as permanent product on this record would sanction immediate and unjustified harm to Pitney Bowes and other companies. The Commission has a statutory obligation to ensure that the Postal Service's Request meets all applicable statutory requirements. No such finding can be made where, as here, there is a clear violation of section 404a.

Any delay in the timing of the permanent product launch is entirely of the Postal Service's own making. Despite the section 404a issues having been raised more than a year ago, and despite assurances that the issue would be dealt with during the market test, the Postal Service has taken no steps to address the stated concerns. The implementing regulations would preclude competitive postage evidencing options for USPS Connect Local Mail in favor of the Postal Service's own competitive offering in violation of section 404a(a)(1); therefore, the Request must be denied.

### **III. CONCLUSION**

Pitney Bowes commends the Postal Service for exploring this new product offering. However, Pitney Bowes opposes the Postal Service's current Request to convert the Connect Local Mail market test to a permanent product offering at this time because, as proposed, the offering would provide an unfair

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<sup>39</sup> See Order No. 6080 at 11, n.20; Docket No. MC2023-12, Order Dismissing Without Prejudice Postal Service's Request to Convert USPS Connect Local Mail Market Test to a Permanent Offering, October 17, 2022 (Order No. 6301).

competitive advantage to the Postal Service in violation of section 404a. Pitney Bowes is hopeful the Postal Service will reconsider its position not only to cure the section 404a issues, but because opening this product up to other competitive postage evidencing options will help advance the stated goals of the product by making it even more accessible to the small and medium-sized business users who will benefit from a same day, next day local document delivery service. For the reasons stated above, the Commission should deny without prejudice the Postal Service's request to convert USPS Connect Local Mail market test to a permanent product offering and direct the Postal Service to use the remaining duration of the market test period to cure the section 404a issues.

Respectfully submitted:

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